---DRAFT UNAPPROVED---

VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES

Thursday, June 21, 2012 Department of Health Professions Richmond, VA

CALL TO ORDER: Dr. Dalton called the meeting of the Full Board to order at 8:42 a.m.

ROLL CALL

MEMBERS PRESENT:
Claudette Dalton, M.D., President
Valerie Hoffman, D.C., Vice-President
Stuart Mackler, M.D., Secretary-Treasurer
Deeni Bassam, M.D.
Sandra Bell, M.D.
Randy Clements, D.P.M.
William Epstein, M.D.
Irina Farquhar, Ph.D.
Stephen Heretick, J.D.
Robert Hickman, M.D.
Jane Maddux
Jane Piness, M.D.
Karen Ransone, M.D.
Wayne Reynolds, D.O.

MEMBERS ABSENT:
Kamlesh Dave, MD
Gopinath Jadhav, M.D.
Michael Signer, Ph.D., J.D.

STAFF PRESENT:
William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Colanthia Morton Opher, Operations Manager
Dianne Reynolds-Cane, MD, DHP Director
Arne Owens, DHP, Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, AAG

OTHERS PRESENT:
Megan Miller, Navigation/reading for Del. Tag Greason
Eli Newcomb, The Faison School
Toni Haman
Peggy Halliday, VA Institute of Autism
Lavada Robertson, Virginia Autism Project
Angie Leonard

Justin Berkley
Nicole Brenner, Virginia Autism Project
Amie Perl
Ethan Long, VIA
Emily Callahan, VIA
Rick Whitehouse, FSMB
Jonathan Jagoda, FSMB
Becky Bowers-Lanier, Commonwealth Autism Service
Mike Jurgensen, MSV
Laura Lee Viergever, VAHP
Kathy Matthews, The Faison School
Bethany Marcus, PhD
Janet Lachousky, Spritos School/Richmond Therapy Consultants
Hunter Jamerson, JD, MacCauley & Burtch, PC

EMERGENCY EGRESS PROCEDURES

Dr. Hoffman read the emergency egress procedures for Conference Room 2.

APPROVAL OF THE FEBRUARY 23, 2012 MINUTES

Dr. Mackler moved to accept the minutes of February 23, 2012 as presented. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

Dr. Reynolds moved to adopt the agenda as presented. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

Dr. Dalton welcomed the guests in the audience and introduced Rick Whitehouse, JD and Jonathan Jagoda as they prepared to present the Board.

There was no public comment.

FEDERATION OF STATE MEDICAL BOARDS (FSMB) REPORT ON MAINTENANCE OF LICENSURE AND RELATED ISSUES

Mr. Whitehouse began his presentation by extending thanks from the Federation for the opportunity to engage the Board in deeper discussion and at greater length about the issues at hand. Mr. Whitehouse stated that as the leader in medical regulation, the Federation serves as a catalyst for effective policy and standards. He said that the Federation leads by promoting excellence in

medical practice, licensure, regulation and as the national resource and voice on behalf of state medical boards that protect the public.

Mr. Whitehouse's presentation addressed three topics: maintenance of licensure, telemedicine, and licensure portability initiatives.

Maintenance of licensure

Mr. Whitehouse reminded the Board of FSMB's 2004 Policy Statement initiating Maintenance of licensure (MOL): State medical boards have a responsibility to the public to ensure the ongoing competency of physicians. Mr. Whitehouse remarked that lifelong learning is a hallmark for all professions and that most physicians already engage in it. The question is, how do we know that they are doing and how do we demonstrate that to the public. Mr. Whitehouse then reviewed MOL's guiding principles and its framework which consists of the three major components, 1) reflective self-assessment, 2) assessment of knowledge and skills, and 3) performance in practice.

Telemedicine

Mr. Whitehouse pointed out that Maryland and Vermont recently passed legislation that would require private insurance companies to cover telemedicine services to the same extent as face-to-face consultations. Mr. Whitehouse advised that, at the present time, the Federation is monitoring approximately 70 bills related to telemedicine.

Licensure portability initiatives

Mr. Jagoda informed the members that the issue of telemedicine has started to gain the attention of Congress. The Department of Defense is using telemedicine in their efforts to assist soldiers returning stateside. The model of a physician with an unrestricted license from any state being able to practice anywhere in the United States is being forwarded as an approach to enhance access to healthcare in rural areas. Mr. Jagoda stated that proposed legislation suggested the creation of a national tandem license with which states could voluntary participate. Mr. Jagoda informed the Board that the Federation was not in favor of the bill. The bill does set the stage for questions that can't be answered such as: how will disciplinary issues be addressed, what state would have jurisdiction, etc.? At this time, the bill proposes that employees that work in a healthcare setting will be required to participate within 2 years after the bill is passed. The bill then sets four years for all physicians, with some exceptions, to obtain a national tandem license. The goal is to expand this to all healthcare professions. Mr. Jagoda opined that there are some changes that need to be made in state-based licensure to gain efficiencies, but that national licensure is not the solution.

After entertaining questions, Mr. Whitehouse presented a plaque from FSMB to the Board, marking the 100th anniversary of FSMB and honoring the Virginia Board as a charter member of FSMB.

INTRODUCTION OF ERIN BARRETT, JD, AAG

Ms. Deschenes introduced Ms. Barrett to the members of the Board. Ms. Deschenes stated that, although new to the Board, Ms. Barrett has been great at handling some of the Board's perennial issues as well as new ones that have been popping up.

Ms. Barrett said that she had enjoyed her work so far, and looks forward to working with all the members of the Board.

INTRODUCTION OF ALAN HEABERLIN, DEPUTY EXECUTIVE DIRECTOR FOR LICENSURE

Dr. Harp introduced Mr. Heaberlin as Ola Power's replacement in the position of Deputy Executive Director for Licensing. Mr. Heaberlin said that he was very excited to be joining the Board staff on June 25, 2012 and knew that he had big shoes to fill. He was warmly welcomed by the Board.

PUBLIC COMMENT (30 minutes)

Meagan Miller - read a letter on behalf of Delegate Greason thanking the Board for their time and supporting the proposed regulations recommended by the Work Group.

Toni Haman – encouraged the Board to maintain the requirements for BACB certification for the renewal of licensure.

Megan Miller – read a letter on behalf of Kate Masincup encouraging the Board to tie initial licensure and renewal of licensure to the BACB.

Megan Miller – addressed two concerns discussed by the Work Group members, 1) how a Virginia license could be affected by indiscriminate sanctions levied by the BACB, and 2) the cost associated with maintaining both a license and BACB certification.

Annie Leonard – spoke in support of Virginia licensure being tied to BACB. She reminded the Board that the goal was not to compromise patient care.

Eli Newcomb - spoke in support of Virginia licensure being tied to BACB, addressed the concerns previously discussed by the Work Group in regards to revoking certification, and cost associated with maintaining both a license and certification. Mr. Newcomb stated that anything less than support of the Work Group's recommendations would be seeking to hold their profession to a standard below those of other states.

Emily Callahan – advocated that an exception be made so that unlicensed personnel, under proper supervision, have the ability to implement behavioral plans.

Lavada Robertson - spoke in support of Virginia licensure being tied to BACB.

Amy Perl – employees ABA's and supports the provision that authorizes them to supervise and

delegate to unlicensed personnel.

Bethany Marcus – encouraged the Board to carefully review the proposed regulations as they relate to supervision of unlicensed personnel and how clinical care is provided. Dr. Marcus expressed concern about the number of hours unlicensed technicians or tutors spend alone with the patient. She noted that unlicensed personnel with limited training may have considerable difficulty managing a number of clinical problems such as injurious behavior, eating disorders, mental issues, etc., which can be challenging even for well-trained, licensed individuals. Dr. Marcus also asked the Board to take into consideration that some students might be receiving supervision from ABA's that may not reside in Virginia or the United States.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Dr. Reynolds-Cane, DHP Director, informed the Board that the agency was doing well. She noted that several agency policies, including procedures for summary suspensions, required reports on impaired practitioners and video teleconferencing, have been implemented and are working well.

Dr. Reynolds-Cane also noted that the Healthcare Workforce development grants were approved and that the use of the PMP continues to increase.

Dr. Dalton thanked Dr. Reynolds-Cane and Mr. Owens, DHP Deputy Director, for all the work that they do on behalf of the Board.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Dalton gave a brief overview of the Federation's 100th Year Annual Meeting that she, Dr. Reynolds, Mr. Heretick, Dr. Farquhar, and Ms. Deschenes attended in April. She also advised that there was the perception at the MOL pilot project workshop that other agendas were in play, and some states decided to pull out. Dr. Dalton said that Virginia has decided to participate in generic pilots on readiness and communication; however, that does not preclude Virginia from developing what a MOL platform should look like. Dr. Dalton informed the members that the final re-entry report was accepted and that the Non-Physician Committee would be meeting again on July 5, 2012.

VICE-PRESIDENT'S REPORT

There was no report.

SECRETARY-TREASURER'S REPORT

There was no report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp reported that the Board is continuing to operate within its projected budget for this fiscal year. The cash balance as of April 30, 2012 was $5,595,079.

- HPMP Statistics

Dr. Harp reviewed the HPMP statistics reporting the actions taken by the Monitoring Program Committee. Dr. Harp also informed the members that he presented at the Citizens Advocacy Center's conference on "Regulatory Management of Chemically Dependent Health Care Practitioners" on June 12, 2012. He addressed the Virginia model of communication between the monitoring program and the Board.

- Board Appointments

Dr. Harp recognized the seven board members whose terms are due to expire on June 30, 2012. Dr. Harp thanked them for all their hard work over the years and expressed his gratitude for being able to work with such wonderful people.

- Mixing, Diluting or Reconstituting Inspections

Dr. Harp advised that the MDR inspections were going very well. To date, the Board has seen a very high rate of compliance.

- SB 313

Dr. Harp provided a summary of SB 313 which establishes licensure for surgical assistants and surgical technologists by the Board of Medicine. Although this bill was not passed into law this year, it will be taken up in the 2013 Session of the General Assembly.

- MOL Pilot

Dr. Harp reminded the Board that they had voted in favor of the MOL pilot that seeks to synchronize maintenance of licensure with Virginia's renewal process, so staff will be working with the Data division to consider approaches.

- Annual FSMB Disciplinary Report

Dr. Harp provided a verbal report of the FSMB disciplinary report provided by Drew Carlson in

April 2012. He explained the composite action index (CAI) that takes into account all levels of actions taken by a board. Dr. Harp noted that Virginia's CAI ranked 17 out of 70. Large boards that had a higher CAI were Ohio, Texas and North Carolina.

Committee and Advisory Board Reports

Dr. Mackler moved to accept the committee reports en bloc. The motion was seconded and carried unanimously.

Other Reports

Assistant Attorney General

Erin Barrett, Assistant Attorney General, provided an update on the Board's ongoing litigation. No action was required by the Board.

Board of Health Professions

Dr. Harp advised that a Medicine representative has not yet been appointed to the Board of Health Professions, but expects that one will be in the near future. Dr. Harp then highlighted the Regulatory Research Committee minutes of May 8, 2012 indicating that licensure of perfusionists, laboratory scientists, and medical laboratory technicians, may be coming down the pike. Dr. Harp stated that if the surgical assistants and surgical technologists become regulated next year, the number of professions at the Board will be nineteen.

Dr. Dalton voiced concern about the growing number of regulated professions under the Board and its staffing patterns. She asked whether or not consideration have been given to spinning the allied professions off into an allied board. Dr. Reynolds-Cane advised that the Board of Health Professions has conducted a study and the states that did have an allied board were no better off than those without; it's 6 on one hand, ½ dozen on the other. Dr. Reynolds-Cane then stated that there may be something that can be done within the Board to address this issue.

Podiatry Report

Dr. Clements reported that he was heading up a new podiatry residency program at Carillon Clinic. He noted that this was the first new podiatry program in Virginia in 25 years.

Chiropractic Report

No report.

Joint Boards of Nursing and Medicine

Dr. Dalton thanked all involved for participating in the meeting of the Joint Boards in April. She advised that the draft regulations for nurse practitioners will be at discussed at Medicine's Executive Committee meeting in August.

Regulatory and Legislative Issues

Report of 2012 Session of the General Assembly

Ms. Yeatts reviewed the ongoing regulatory activity of the Board of Medicine.

She advised the Board that **HB268** – Practice of occupational therapy, which includes promulgation of emergency regulations, and **HB346-** Nurse practitioners: practice as part of patient care teams that includes a physician, will be on the Executive Committee's agenda in August.

Ms. Yeatts noted that HB1106, which gives the Board of Medicine the authority to license behavior analysts and assistant behavior analysts and requires the Board to promulgate emergency regulations within 280 days, will be discussed later in the agenda.

Recommendation for Legislative Proposal – Chapter 29 of Title 54.1

Ms. Yeatts explained that this proposal is identical to the "clean-up" legislation that was recommended to the Governor for the 2011 and 2012 Sessions and was not accepted for introduction. This version omits the revision for the names of the osteopathic and podiatric professions.

Dr. Ransone moved to recommend the legislative proposal for introduction to the 2013 General Assembly. The motion was seconded and carried unanimously.

Chart of Regulatory Actions

Ms. Yeatts provided this report for informational purposes only.

Dr. Dalton inquired as to what the Board's responsibility was for proposed regulations that were not approved in the active administration.

The members were informed that the regulations might need to be resubmitted.

Regulatory Recommendation on Licensure of Behavior Analysts and Assistant Behavior Analysts

Dr. Harp introduced Theodore Hoch, Ed.D., BCBA-D, Chair of the ABA Work Group to the Board. Dr. Hoch said he would be happy to answer any questions or address any concerns the Board might have as they discussed this item.

Ms. Yeatts then highlighted the applicable Code sections in the 2011 Acts of the General Assembly relating to health insurance coverage for autism spectrum disorder, the applicable Code sections in the 2012 Acts of the General Assembly relating to the licensure of behavior

analysts and assistant behavior analysts, the description of a BCBA and BCaBA, fee schedules, disciplinary and ethical standards of the Behavior Analyst Certification Board, and the requirements for maintaining BACB certification.

Ms. Yeatts then began the review of the proposed regulations as recommended by the ABA Work Group.

Beginning with **18VAC85-150-60, 18VAC85-150-70, and 18VAC85-150-80** (page 195 of the agenda)

Ms. Yeatts advised that this amendment was not unanimous in the Work Group, and that the suggestion to attest to having current BACB certification instead of meeting Board of Medicine continuing education requirements would require an added cost to maintain a Virginia license. Also, there was some thought that there could be confusion about which entity was to be paid in order to maintain licensure. Ms. Yeatts pointed out that those in support of this change feel that maintaining BACB certification has added value.

Dr. Ransone questioned the attestation to BACB certification since this option might create an issue for the Board's random audits and submission of primary source documentation from the licensee.

Ms. Deschenes reminded the Board that physician assistants and nurse practitioners have a similar requirement; however, both professions work directly with physicians. She stated that if the ABA profession will be practicing independently, with just the BACB as the qualifying entity, it will make it more legally difficult for the Board to take disciplinary action against a licensee.

Dr. Dalton suggested that since the original proposed continuing education requirements equate to those of the BACB, why does the Work Group amendment propose just the BACB and not an either or?

Dr. Hoffman expressed concern about establishing a new precedent by allowing an outside entity full authority for licensure/continuing education requirements for a regulated profession.

Dr. Hoch addressed the Board and explained that the Work Group was interested in maintaining the high standards set by the BACB. He also noted that changes to the certification requirements are more easily updated through the BACB than they would be through the Board of Medicine.

The question of how do the BACB ethical standards overlap with 2915 was raised; Dr. Harp said that the question is whether or not the Board would have the statutory foundation to reach the standards of BACB. Ms. Deschenes advised that the BACB is not more stringent in the area of negligence than the Board. Ms. Deschenes noted that the BACB standard is "gross" and the Board's is "simple". Ms. Deschenes also stated that the courts have made it clear that we cannot reach past our regulations.

Ms. Deschenes agreed that while we want to license A+ practitioners and have a top notch

standard, the Board is required to license minimally competent practitioners. Requiring a licensee to keep certification would be setting a precedent and by incorporating the BACB by reference, the Board would diminish its authority and put itself at risk.

Dr. Ransone moved to retain the original proposed language for sections **18VAC85-150-60, 18VAC85-150-70, and 18VAC85-150-80**. The motion was seconded.

After discussion, Dr. Ransone agreed to a friendly amendment to her motion to amend 18VAC85-150-80 A(1) as follows: Information on continued practice in another jurisdiction licensed as a behavior analyst or assistant behavior analyst during the period in which the license has been inactive or lapsed; or board certified. The amended motion was seconded and carried unanimously.

18VAC85-150-100

Dr. Dalton suggested that language be added that would require the supervisor to maintain a written agreement with the assistant behavior analyst/unlicensed personnel.

Dr. Mackler moved that Dr. Dalton's suggestion be added where deemed appropriate. The motion was seconded and carried unanimously.

The Board members expressed several concerns regarding supervision and opined that the regulations should have more specificity. Some saw a lack of clarity about what should be considered an adequate number of hours of supervision for assistant behavior analysts and unlicensed personnel. In response, Dr. Hoch mentioned the BACB's 1 hour per month requirement and that some ABA practitioners do not think that number is adequate for all circumstances.

Dr. Ransone moved to reinstate section E under 18VAC85-150-110 but change the frequency from every two weeks to every four weeks. The motion was seconded and carried unanimously.

Dr. Bassam stated that supervision is an important part of these professions and moved that section D under 18VAC85-150-110 be reinstated. The motion was seconded.

During the discussion of "real time", Dr. Mackler asked that the term be struck and then asked to withdraw his motion.

Dr. Bassam accepted an amendment to this motion to include language to clarify the term. The amended motion was seconded and carried unanimously.

Dr. Epstein asked "what is a comfortable number of unlicensed personnel for a BCBA or BCaBA to supervise"?

Dr. Harp pointed out that 18VAC85-150-150, A(2) states "A practitioner shall not knowingly allow subordinates to jeopardize client safety or provide client care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to

subordinates who are properly trained and supervised."

Dr. Hoch advised that the BACB does not provide the analysts or assistant analysts with a maximum number of unlicensed personnel that they can supervise at one time. Dr. Hoch informed the Board that he currently supervises 55 unlicensed personnel, but they were very well trained. Dr. Hoch did note that in other states the number is no more than 10 unlicensed personnel per analyst.

Dr. Bassam stated that besides the number of unlicensed personnel that can be supervised by an analyst, consideration should also be given to what tasks can be delegated to them.

After discussion, Dr. Bassam moved to strike F under 18VAC85-150-110 and reinstate section 18VAC85-150-120 – Supervision of unlicensed personnel. The motion was seconded and carried unanimously.

Dr. Hoch asked the Board to keep in mind Delegate Greason's intent was to permit unlicensed personnel to provide services/procedures for which they were trained.

Dr. Mackler moved to adopt the proposed regulations as amended during this meeting and adopt a Notice of Intended Regulatory action to replace the emergency regulations within 12 months. The motion was seconded and carried unanimously.

Licensing Report

Dr. Harp provided the total number of current active licensees under the Board of Medicine as of June 2012.

Discipline Report

Ms. Deschenes provided case statistics as of June 2012. She noted that there are currently 305 cases in investigations, 144 at probable cause, 84 in APD, 17 scheduled for informal conference, and 6 scheduled for formal hearings.

Nominating Committee

The Nominating Committee comprised of Mr. Heretick, Dr. Bell, and Dr. Piness, presented the following slate for consideration: Valerie Hoffman, DC – President; Stuart Mackler, MD – Vice-President; and Wayne Reynolds, DO – Secretary/Treasurer.

With no other nominations from the floor, the slate was accepted by acclamation.

Recognition of Board members whose terms are expiring

Dr. Harp again expressed his thanks to those board members whose terms are expiring June 30, 2012. He said that this is a very hard time for the board losing such a core group. He stated that most of them arrived shortly after he became the Board's director and it has been a wonderful

experience to grow with them as regulators. Dr. Harp said that he is at a loss for words to express how much they will be missed.

Members with terms expiring:

Deeni Bassam, MD
William Epstein, MD
Gopinath Jadhav, MD
Stuart Mackler, MD
Jane Piness, MD
Karen Ransone, MD
Wayne Reynolds, DO

Dr. Mackler also expressed his thanks to his colleagues on the Board that supported him in 2010 on his medical mission to Haiti.

Ms. Deschenes also thanked those members saying she was fortunate to work with such a seasoned group. She remarked that "you're an amazing bunch of people".

Mr. Heretick, whose term expired in 2011, said "To the seven, let me merely remind you, like the Hotel California, you can check out any time you like, but you can never leave".

Announcements

Staff reminded the Board members of their hearing assignments for the remainder of the day.

Adjournment: With no other business to conduct, the meeting adjourned at 1:10 p.m.

Next scheduled meeting: October 25, 2012

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Valerie Hoffman, D.C.
President, Chair

William L. Harp, M.D.
Executive Director

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Colanthia M. Opher
Recording Secretary

The following are the emergency regulations approved by the Board of Medicine for the professions of licensed behavior analysts and licensed assistant behavior analysts.

BOARD OF MEDICINE

Licensure of behavior analysts

CHAPTER 150

REGULATIONS GOVERNING THE PRACTICE OF BEHAVIOR ANALYSIS

Part I.

General Provisions.

18VAC85-150-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

Board

Practice of behavior analysis

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

BACB means the Behavior Analyst Certification Board, Inc.

BCBA® means a Board Certified Behavior Analyst®.

BCaBA® means a Board Certified Assistant Behavior Analyst®.

18VAC85-150-20. Public participation.

A separate board regulation, 18VAC85-10-10 et seq., provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-150-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-150-40. Fees.

A. The following fees have been established by the board:

1. The initial fee for the behavior analyst license shall be $130; for the assistant behavior analyst, it shall be $70.

2. The fee for reinstatement of the behavior analyst license that has been lapsed for two years or more shall be $180; for the assistant behavior analyst, it shall be $90.

3. The fee for active license renewal for a behavior analyst shall be $135; for any assistant behavior analyst, it shall be $70. The fees for inactive license renewal shall be $70 for a behavior analyst and $35 for an assistant behavior analyst. Renewals shall be due in the birth month of the licensee in each odd-numbered year.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for a behavior analyst and $30 for an assistant behavior analyst.

5. The fee for a letter of good standing or verification to another state for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to §54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a returned check shall be $35.

8. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

Part II.

Requirements for Licensure as a Behavior Analyst or an Assistant Behavior Analyst.

18VAC85-150-50. Application requirements.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-150-40.

2. Verification of certification as required in 18VAC85-150-60.

3. Verification of practice as required on the application form.

4. If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.

5. Verification from the BACB on disciplinary action taken or pending by that body.

18VAC85-150-60. Licensure requirement.

An applicant for a license to practice as a behavior analyst or an assistant behavior analyst shall hold current certification as a BCBA® or a BCaBA® obtained by meeting qualifications and passage of the examination required certification as a BCBA® or a BCaBA® by the BACB.

Part III.

Renewal and Reinstatement.

18VAC85-150-70. Renewal of licensure.

A. Every behavior analyst or assistant behavior analyst who intends to maintain an active license shall biennially renew his license each odd-numbered year during his birth month and shall:

1. Submit the prescribed renewal fee;

2. Attest to having met the continuing education requirements of 18VAC85-150-100.

B. The license of a behavior analyst or assistant behavior analyst which has not been renewed by the first day of the month following the month in which renewal is required is lapsed. Practice with a lapsed license may be grounds for disciplinary action. A license that is lapsed for two years or less may be renewed by payment of the renewal fee, a late fee as prescribed in 18VAC85-150-40, and documentation of compliance with continuing education requirements.

18VAC85-150-80. Inactive licensure.

A behavior analyst or assistant behavior analyst who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice as a behavior analyst or assistant behavior analyst in Virginia.

18VAC85-150-90. Reactivation or reinstatement.

A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a behavior analyst or assistant behavior analyst shall submit evidence of competency to return to active practice to include one of the following:

1. Information on continued practice in another jurisdiction as a licensed behavior analyst or a licensed assistant behavior analyst or with certification as a BCBA® or the BCaBA® during the period in which the license has been inactive or lapsed;

2. Twelve hours of continuing education for each year in which the license has been inactive or lapsed, not to exceed three years; or

3. Recertification by passage of the BCBA® or the BCaBA® certification examination from the BACB.

B. To reactivate an inactive license, a behavior analyst or assistant behavior analyst shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.

C. To reinstate a license which has been lapsed for more than two years, a behavior analyst or assistant behavior analyst shall file an application for reinstatement and pay the fee for reinstatement of his licensure as prescribed in 18VAC85-150-40. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience or reexamination.

D. A behavior analyst or assistant behavior analyst whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-150-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

E. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-150-100. Continuing education requirements.

A. In order to renew an active license, a behavior analyst shall attest to having completed 24 hours of continuing education and an assistant behavior analyst shall attest to having completed 16 hours of continuing education as approved and documented by a sponsor recognized by the BACB within the last biennium.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

B. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

C. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

D. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

F. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part IV.

Scope of Practice.

18VAC85-150-110. Scope of practice.

The practice of a behavior analyst includes:

1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior; and

2. Supervision of licensed assistant behavior analysts and unlicensed personnel.

18VAC85-150-120. Supervisory responsibilities.

A. The licensed behavior analyst is ultimately responsible and accountable for client care and outcomes under his clinical supervision.

B. There shall be a written supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst that shall address:

1. The domains of competency within which services may be provided by the licensed assistant behavior analyst; and

2. The nature and frequency of the supervision of the practice of the licensed assistant behavior analyst by the licensed behavior analyst.

A copy of the written supervisory agreement shall be maintained by the licensed behavior analyst and the licensed assistant behavior analyst and made available to the board upon request.

C. Delegation shall only be made if, in the judgment of the licensed behavior analyst, the task or procedures can be properly and safely performed by an appropriately trained assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.

D. Supervision activities by the licensed behavior analyst include:

1. Direct, real-time observation of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments and/or training others to implement them, with feedback from the supervisor.

2. One-to-one real-time interactions between supervisor and supervisee to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and

guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.

3. Real-time interactions between a supervisor and a group of supervisees to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.

4. Informal interactions between supervisors and supervisees via telephone, electronic mail, and other written communication are encouraged but may not be considered formal supervision.

For the purposes of this subsection, "real-time" shall mean live and person-to-person.

E. The frequency and nature of supervision interactions are determined by the individualized assessment or treatment plans of the clients served by the licensed behavior analyst and the assistant behavior analyst, but shall occur not less than once every four weeks, with each supervision session lasting no less than one hour.

18VAC85-150-130. Supervision of unlicensed personnel.

A. Unlicensed personnel may be supervised by a licensed behavior analyst or an assistant behavior analyst.

B. Unlicensed personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and

2. Certain routine client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis.

Part V.

Standards of Professional Conduct.

18VAC85-150-140. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-150-150. Client records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.

B. Practitioners shall provide client records to another practitioner or to the client or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible and complete client records.

D. Practitioners who are employed by a health care institution, educational institution, school system or other entity in which the individual practitioner does not own or maintain his own records shall maintain client records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner owns and is responsible for client records shall:

1. Maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last client encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the client or his legally authorized representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.

3. When closing, selling or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client or legally authorized representative.

18VAC85-150-160. Practitioner-client communication; termination of relationship.

A. Communication with clients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a client or his legally authorized representative in understandable terms and encourage participation in decisions regarding the client's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner.

3. Before an initial assessment or intervention is performed, informed consent shall be obtained from the client or his legally authorized representative. Practitioners shall inform clients or their legally authorized representative of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner would tell a client.

a. Informed consent shall also be obtained if there is a significant change to a therapeutic procedure or intervention performed on a client that is not part of routine, general care and which is more restrictive on the continuum of care.

b. In the instance of a minor or a client who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

c. An exception to the requirement for consent prior to performance of a procedure or intervention may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the client.

4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from clients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the practitioner/client relationship.

1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make the client record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-150-170. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow subordinates to jeopardize client safety or provide client care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with client care or could reasonably be expected to adversely impact the quality of care rendered to a client; or

4. Exploit the practitioner/client relationship for personal gain.

B. Advocating for client safety or improvement in client care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

18VAC85-150-180. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320 a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-150-190. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or

2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a client.

1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client means spouse or partner, parent or child, guardian, or legal representative of the client.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.

18VAC85-150-200. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.